The accused in evidence-in-chief denied having heard PW.1 request him to open P.8B but in cross-examination he stated that he *refused* to open the brief-case when requested to do so by PW.1 because it did not belong to him. I was more than satisfied that PW.1 did enquire about the ownership of P.8B and that the accused well knew what the contents of the brief-case were when he refused to open it. I also found it hard to believe that the large amount of money found in P.8A was derived from savings made by him from tips he received as a bar captain. Further, I found it incredible that anybody with such a lucrative source of income would give it up for an arduous, if not financially risky, existence as a poultry-farmer in some remote town. I did not believe the accused's story. On the contrary, I found PW.1, PW.4 and PW.6 to be truthful witnesses and the defence went, in my view, to strengthen the prosecution case.

I, accordingly, found the accused guilty as charged and convicted him. I sentenced him to death.

Order accordingly.

Solicitors: *Elyas Majeed & Co.*

HENG BAK TEONG & ANOR. v. NG AH SENG

[O.C.J. (Mohamed Dzaiddin J.) June 8, 22, September 3, October 20 & November 2, 1987]

[Penang – Originating Motion No. 32-28-87]

Land Law – Transfer and charge documents – Registration of – Rejection of documents – Encumbrance on title – Encumbrance on order of court – Whether order of court prohibitory order or injunction – Injunction in substance – Injunction does not protect title – Removal of order restraining dealings – Order for.

The applicants agreed to purchase certain lands from one Wong Choon Sim @ Ong Choon Sim. They executed a sale and purchase agreement the same day, and after payment of the full purchase price, the vendor executed a transfer of the property in favour of the applicants. However, when the applicants sought to register the transfer and a charge document (which was also created), the Registry of Land Titles rejected the documents because there was an earlier order of court dated October 10, 1983 lodged against the registered owner. The order of court was obtained by the respondent who was the plaintiff in another civil suit and the registered owner was the defendant.

By way of the present originating motion, the applicants sought to set aside the order of court made on October 10, 1983 and for an order directing the Registrar of the Land Titles Registry to cancel the lodgment of the said order on the title to the property.

Held, allowing the application: (1) the order dated October 10, 1983 was in substance an injunction order granted by the court against the registered owner restraining the sale and charge of the said property to a third party;

(2) in the present case, the court had rightly granted the said order restraining the registered owner from transferring or charging or in any way dealing with the said property until after the trial of action or further order;

(3) however, an injunction does not accord statutory protection of the purchaser's interest under the National Land Code and therefore is not registerable or indorsable on the title to the said property;

(4) the Registrar of Land Titles was wrong in registering the said order of court as a prohibitory order nor is there any provision in the National Land Code for an injunction order to be registered on the title to the said property binding all and sundry;

(5) an order was made directing the Registrar of Land Titles to expunge and remove from the instrument of title of the property the order of court dated October 10, 1983.

[*Editorial Note:* The respondent is appealing to the Supreme Court against the whole of the above decision.]

Cases referred to:

(1) *Eng Mee Yong & Ors.* v. *V. Letchumanan* [1979] 2 M.L.J. 212.

(2) *Hope* v. *Carnegie* (1868) L.R. 7 Eq. 254.

ORIGINATING MOTION.

Lim Kim Chuan for the applicants.

R. Rajasingam for the respondent.

Cur. Adv. Vult.

Mohamed Dzaiddin J.: By this originating motion the applicants seek to set aside the order of court made on October 10, 1983 and for an order directing the Registrar of Land Titles, Penang, to cancel the lodgment of the said order on the title to the property in question.

The complaint of the applicants appear to be based on the following facts. On September 22, 1983 they agreed to purchase from one Wong Choon Sim @ Ong Choon Sim ("the registered owner") all the piece of land known as Plot No. 809 No. P.T. PTBM/C. 005 bearing Suratan Hak-

milik Sementara No. H.S. (D) 256 Mukim 1, Seberang Perai Tengah, Pulau Pinang together with holding house No. 181, Gan Chai Leng, Chai Leng Park, Prai ("the said property") at a price of $70,000.00. They executed a sale and purchase agreement on the same day and paid the registered owner the full purchase price, whereupon she executed a transfer of the said property in favour of the applicant. On January 24, 1984, their solicitors Messrs Lim Kim Chuan & Company presented the said transfer together with a charge document which the applicants had executed and created in favour of Ban Hin Lee Bank Bhd. for registration at the office of the Registry of Land Titles, Penang. However, the said transfer and charge documents were rejected for registration by the Registry by reason of an earlier encumbrance which the said Registrar had entered on the title of the said property, which read as follows:

"Perintah Menegah Bil. No. 42/83 Jil. No. 2 Fol. No. 173.

Perintah Mengikat tanah bertarikh 10-10-83 didaftarkan pada 14-10-83 pada pukul 9.34 pagi.

(until after the trial of this action or until further order)."

The order of October 10, 1983 referred to was made by this court on the application of the respondent, who is the plaintiff in Civil Suit No. 611 of 1983, against the registered owner, who is the defendant. The order directed the registered owner, her agents or servants or otherwise *be restrained and an injunction is hereby granted restraining and precluding from transferring or charging or in any other way deal with the property* known as Plot 5 No. 809 PT/PTBM/C.005 Mk. 1 Seberang Perai Tengah, Penang and comprised in Suratan Hakmilik Semenara No. H.S. (D) 256 Mk. 1 together with the house erected thereon bearing No. 181 Gan Chai Leng, Chai Leng Park, Prai, Province Wellesley *until after the trial of this action or until further order.* (The italics are mine.)

It seems clear to me that this is an injunction order granted by the court against the registered owner restraining the sale and charge of the said property to a third party. However, when this order was presented at the Registry of Titles, Pulau Pinang, the Registrar noted the lodgment of the said order on the title as that of a prohibitory order by virtue of the words "Perintah Menegah" which literally means "Order of Restraining" and under the National Land Code can only mean a prohibitory order.

Mr. Lim Kim Chuan, for the applicants, submitted that the Registrar was wrong in registering the said order of court as a prohibitory order because the defendant had not complied with Part Nineteen (Restraints on Dealings), Chapter 2 of the National Land Code. Counsel referred to the meaning of "prohibitory order" under section 334 as "where land or an interest in land held by a judgment debtor is to be sold in execution proceedings, an order made pursuant to rules of court by a court of competent jurisdiction prohibiting the judgment debtor from effecting any dealing therewith or from effecting such dealing therewith as may be specified in the order." In the instant case, counsel submitted that the registered owner was never a judgment debtor. Secondly, no such prohibitory order was applied for by the defendant pursuant to Order 47 rule 6 of the Rules of the High Court. It was further submitted that at any rate the prohibitory order would only be valid for six months unless a further extension was granted by the court. In the above circumstances, there was no question of the said order of court being registered as a prohibitory order.

Mr. Rajasingam, counsel for the respondent, contended that the said order of court was a prohibitory order. Counsel relied on the affidavit of the defendant filed on May 21, 1987 (enclosure 4). On this issue, counsel referred to paragraphs 11, 13 and 15 of the affidavit which in essence confirmed his submission that what was applied for and granted by the court was a prohibitory order.

Upon considering the submissions on June 8, 1987, I agreed with counsel that in form and substance the said order of court was a prohibitory order. However, I found that the requirements of the National Land Code under Chapter 2 Part Nineteen and Order 47 rule 6 of the Rules of the High Court relating to prohibitory orders have not been complied with. In such circumstances, I allowed the application and made an order in terms of prayers 1, 2 and 3 with damages to be assessed by the Registrar.

Following this order, I directed counsel to make further submissions on the question of injunction which is embodied in the said order of court. In addition, as the point would involve the function of the Registrar of Land Titles when registering the said order of court, I directed that the State Legal Adviser, Penang be present in court as *amicus curiae.* On October 20, 1987, I heard further submissions. On this occasion, Mr. Rajasingam conceded that the said order of court was not a prohibitory order but an injunction restraining the

registered proprietor, the defendant in Civil Suit No. 611 of 1983, from transferring or charging the said property until the trial or further order. Hence, according to counsel, the said order of court was valid and properly registered by the Registrar of Land Titles, Penang. Mr. Lim, on the other hand, still contended that it was a prohibitory order and as the document did not comply with the provisions of the National Land Code the Registrar was wrong in registering the said order on the title of the said property. Datuk Shaari submitted that from his enquiries, the Registrar had construed the said order to be a prohibitory order. However, as the provisions of the National Land Code were not followed, there was no question that the order was a prohibitory order. In the result, the said order was an injunction which was not registrable under the National Land Code.

Clearly, on the basis of further submissions, the sole issue here is whether or not an injunction against sale or charge of property is registrable under the National Land Code. Both Mr. Lim and Datuk Shaari were of the view that it is not. Mr. Rajasingam thought otherwise. He referred me to a passage from the judgment of Lord Diplock in *Eng Mee Yong & Ors.* v. *Letchumanan*[1] at p. 214 which reads:

> "The caveat under the Torrens system has often been likened to a statutory injunction of an interlocutory nature restraining the caveatee from dealing with the land pending the determination by the court of the caveator's claim to title to the land in an ordinary action brought by the caveator against the caveatee for that purpose."

It is my opinion that the above passage cannot be an authority for a proposition that an injunction is registrable under the National Land Code following the footsteps of caveats or prohibitory orders. It is trite that under our law, an injunction is a form of preventive relief granted at the discretion of the court (section 50 Specific Relief Act 1950). The court, when granting an injunction, acts *in personam* (*Hope* v. *Carnegie*[2]). Provided that the applicant has a substantive cause of action, the court's discretion to grant or refuse an injunction is almost unlimited and in cases of real property, the court has always granted an injunction to restrain the sale of land to a third party when the vendor has already agreed to sell it to the applicant (David Bean on *Injunction,* 3rd Ed. p. 6.) Thus, in the present case, the court had rightly granted the said order restraining the registered owner from transferring or charging or in any way dealing with the said property until after the trial of action or further order. But, is the said injunction order registrable as a restraint against dealing under the National Land Code? If it is registrable, then the order binds subsequent dealings. In my judgment, an injunction does not accord statutory protection of the purchaser's interest under the National Land Code and therefore is not registrable or indorsable on the title to the said property. The protection which the respondent has in the present case is for lodgment of a private caveat or, if he is a judgment creditor, to apply to court for a prohibitory order under section 335 of the National Land Code. In the case of the former, it is for him to establish that he has a caveatable interest in the said property. As none of the above applies in the present case, I find that the Registrar of Land Titles was wrong in registering the said order of court as a prohibitory order nor is there any provision in the National Land Code for an injunction order to be registered on the title to the said property binding against all and sundry.

For the above reasons, I make an order directing the Registrar of Land Titles, Penang to expunge and remove from the instrument of title of the said property the said order of court of October 10, 1983. Costs of this application shall be the applicants' costs.

Order accordingly.

Solicitors: *Lim Kim Chuan & Co.; R. Rajasingam & Company.*